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Anna R. Spitzer
SECRETARY OF THE COUNTY COUNCIL FOR
MONTGOMERY COUNTY, MARYLAND

#1
Bill No. 11-76

Introduced: April 6, 1976
Enacted:

COUNTY COUNCIL FOR
MONTGOMERY COUNTY, MARYLAND

April Legislative Session 1976

By: Council President at request of County Executive

1 AN ACT to add a new Chapter 18A, title "Employer - Employee Rela-
2 tions Act," to the Montgomery County Code 1972, as amended,
3 to follow immediately after Chapter 18, thereof, to provide
4 for the election and certification of employee organizations
5 for purposes of meeting with County officials concerning
6 conditions of employment and the resolution of grievances,
7 but excluding certain topics from being discussed at any such
8 meetings; to provide for the designation of employee units
9 from which such employee organizations are elected and which
10 such organizations represent; to provide for the recognition
11 of such employee organizations by the County; to provide for
12 the preparation of position papers by the County and such
13 employee organizations; to provide for procedures for the
14 decertification of employee organizations; to define certain
15 terms; to provide for the Chief Administrative Officer to
16 finally resolve disputes arising under this Article; to
17 specify responsibilities of the County and the employee
18 organizations; to provide for the protection of those
19 County employees who choose not to become members of an
20 employee organization; and to provide for the retention of
21 existing personnel laws and regulations and the option of
22 any employee to pursue a grievance through procedures set
23 forth therein.

Be it enacted by the County Council for Montgomery County, Maryland

that -

Sec. 1. Chapter 18A, title "Employer - Employee Relations,"
is hereby added to the Montgomery County Code 1972, as amended, to
follow immediately after Chapter 18 thereof, and to read as follows:

ARTICLE IV
EMPLOYER-EMPLOYEE RELATIONS

33-62. Statement of legislative intent.

The County Council hereby finds that the trend in labor relations between government and its employees is becoming somewhat aligned with the practices of the private sector of representation of employee groups by designated and elected employee organizations. The Council believes that government should take the initiative in providing a vehicle whereby government employee representation can emerge and evolve in a fashion consistent with both the needs of the employee and those of government. The Council further believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The Council also believes that the efficient administration of the County Government is enhanced by providing employees an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment.

33-63. Definitions.

As used herein, the following words and phrases shall be defined as follows:

- a. "Certification" - the procedure whereby employee organizations are elected and recognized to represent employee units.
- b. "Confidential employee" - an employee who in the course of his/her regular duties has access to or possesses information relating to matters which could be the subject of discussions

between employee organizations and the County.

c. "Decertification" - the procedure by which the Chief Administrative Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

d. "Employee" - a County merit system employee who is given a position with the anticipation that it will be necessary to maintain the existence of such position indefinitely on a continuous full-time, year-round basis. The term "employee" does not include supervisory, confidential, and management-level employees.

e. "Employee organization" - any lawful organization which represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

- (1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;
- (2) does not adhere to democratic procedures and practices with regard to election of officers, individual participation in organizational affairs, equal treatment under its by-laws, including dues processing, and disciplinary procedures; or
- (3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

f. "Employee unit" - groupings of employees for purposes of representation in County/employee relations.

g. "Management-level employee" - any employee involved directly in the determination of policy or who responsibly directs the implementation thereof.

h. "Position paper" - a non-binding written memorandum reflecting all items discussed by the County and an employee organization.

i. "Professional employee" - an employee engaged in work:

- (1) predominantly intellectual and varied in character as opposed to routine, manual, mechanical, or physical work;
- (2) involving the consistent exercise of discretion and judgment in its performance;
- (3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; or
- (4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized study in an institution of higher learning.

j. "Supervisor" - any individual having the authority in the interest of the County to:

- (1) hire, transfer, suspend, recall, layoff, promote, discharge, assign work, reward or discipline other employees;
- (2) adjust their grievances;
- (3) responsibly direct them; or
- (4) effectively recommend the aforementioned action.

33-64. Employee rights.

a. An employee shall have the right, freely and without fear of penalty or reprisal, to form, join or assist and be represented by an employee organization or to refrain from any such activity.

b. Each employee shall have the right to be represented by employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through established administrative procedures or through appeal to the Personnel Board, in that nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the

State of Maryland, the Montgomery County Charter, and the Laws
and Ordinances of Montgomery County including the Personnel Regu-
lations.

d. No employee, who is not a member of an employee organization,
shall ever be required to become a member of such an organization
or to pay money to such an organization, except on a purely
voluntary basis.

33-65. Determination of employee units.

a. The Chief Administrative Officer shall make the final deter-
mination as to the composition of employee units. In undisputed
cases, the determination of appropriate units shall be made by
the Chief Administrative Officer within thirty (30) calendar days
after receipt of a request for certification under Section 33-66
of this Article.

b. Employee units may be established on the basis of groupings
of employees who share a clear and identifiable community of in-
terest. Such factors as those employees sharing common skills,
working conditions, physical locations, organizational structures,
and integrated work processes shall be considered. A unit shall
not be established solely on the basis of the extent to which
employees in a proposed unit have organized.

c. Determination of units shall be made so as to include the
largest possible numbers of employees consistent with maintaining
a community of interest of employees to avoid proliferation and
fragmentation of representative units. No unit may include
employees whose duties are management-level, supervisory, or
confidential in nature.

d. Professional employees shall not be included in a unit of
non-professional employees unless a majority of such professional
employees vote for inclusion therein.

e. Units for employees of the uniform services shall be limited
to employees in the ranks of sergeant or equivalent rank and below.

f. In cases where the matters of unit determination are questioned the decision of the Chief Administrative Officer shall be final.

33-65. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon the petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the conducting of a secret ballot election to determine whether the employees desire such organization to act as their representative. Following such petition, the Chief Administrative Officer shall give an appropriate notice to the employees involved.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and by-laws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees who are filling County positions as of the beginning of the pay period preceding the election date.

d. Elections will be performed under the auspices and guidance of the Maryland State Department of Labor and Industry, Division of Arbitration, which shall have the responsibilities and powers given to it under State law.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees within the appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest

number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least sixty percent (60%) of the employees eligible to participate in the election cast valid ballots, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 33-66.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that no representative was selected by the majority of employees.

33-67. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 33-66 for the certification of an employee organization, except as provided in subsection b of this Section 33-67.

b. If an employee organization fails to adhere to any of the provisions of Section 33-73 dealing with employee organization responsibilities, then:

- (1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and

(1) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

33-68. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be born equally by the County and by the employee organization(s) whose name(s) appear on the ballots.

33-69. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 33-66 shall be entitled to meet at reasonable times with County representatives to discuss with such representatives personnel policies, practices and matters affecting working conditions of the employee unit it represents, so far as such discussions may be appropriate under existing laws or regulations. The County shall meet at least once every two years with each certified employee organization.

b. Such meetings and discussions shall not include matters with respect to the mission of the County Government, its budget, its organization, the number of employees and the classifications and grades of positions of employees assigned to an employee unit, work projects or tour of duty, the technology of performing County work, or other provisions that are inherent in the managerial process of determining the necessary steps to carry out the public service missions of the County. Furthermore, the County shall not be obligated to discuss matters which must necessarily be applicable to all employees on a uniform basis, such as the Employees' Retirement System and the Uniform Pay Schedule. However, the County may meet with employee organizations for the purpose of hearing their views on such matters.

c. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any

concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

d. The County and an employee organization may, if desired, and at the conclusion of their discussions prepare written position papers which reflect for future reference the respective positions of the parties on the issues discussed at such meetings. Such position papers shall in no way legally bind any party to the matters expressed therein.

33-70. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for individual grievances.

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board where provided by law.

33-72. County responsibilities.

It shall be the responsibility of the County not to:

- a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;
- b. encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment;
- c. sponsor, control or otherwise assist an employee organization except that the County may furnish customary and routine services and facilities when consistent with the best interest

of the County, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

- d. refuse to accord appropriate recognition to an employee organization qualified for such recognition; or
- e. refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

33-73. Employee organization responsibilities.

It shall be the responsibility of every employee organization not to:

- a. interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;
- b. attempt to induce the County to coerce an employee in the exercise of the rights under this Article;
- c. coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;
- d. call or engage in a strike, work stoppage, or slowdown, picket the County in a County-employee dispute, or condone any such activity by failing to take affirmative action to prevent or stop it;
- e. discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status
- f. refuse to consult or meet with the County as provided by this Article.

Sec. 2. Severability.

The provisions of this Act are severable if any provision, sentence, clause, section or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance,

5 such illegality, invalidity, unconstitutionality, or inapplic-
6 ability shall not affect or impair any of the remaining provisions,
7 sentences, clauses, sections or parts of the Act or their appli-
8 cation to other persons and circumstances. It is hereby declared
9 to be the legislative intent that this Act would have been adopted
10 if such illegal, invalid or unconstitutional provision, sentence,
11 clause, section or part had not been included therein, and if the
12 person or circumstances to which the Act or any part thereof is
13 inapplicable had been specifically exempted therefrom.

1 Sec. 3. Effective date.

2 This Act shall take effect on the 76th day following the date
3 on which it becomes law.